INITIAL STATEMENT OF REASONS

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11, Article 7

Introduction

Existing law establishes the Capital Access Loan Program (CalCAP) and authorizes the California Pollution Control Financing Authority (CPCFA) to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The fees paid to the loss reserve account are matched by CPCFA at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender's loss reserve account are the sole property of CPCFA and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

CPCFA proposes to amend Sections 8070, 8071, 8072, 8073, 8074, and 8076 of Title 4 of the California Code of Regulations (the "Amended Capital Access Regulations") concerning the administration of the program.

The proposed amendments make clarifying changes to existing regulations that implement the CalCAP program.

Necessity

These revisions to the regulations are necessary to implement, interpret and make specific Article 7 of the California Pollution Control Financing Authority Act.

Section Analysis

<u>Section 8070</u>. The existing regulation defines the term "fees" to include fees paid by borrowers and lenders to the lender's loss reserve account pursuant to a specific formula. The proposed revision to this regulation clarifies that a borrower may pay its share of the fees by rolling the fees into the total amount of the CalCAP loan. The second amendment to this regulation would remove duplicative language governing the permissive use of Independent Contributor financing. Subdivision (f) of the existing regulation sufficiently specifies the eligible uses of Independent Contributor financing.

<u>Section 8071</u>. Subdivision (a)(9) of the existing regulation requires a financial institution that participates in the CalCAP program to complete an application that, among other things, permits

CPCFA to audit the records of the financial institution. The proposed revision clarifies that CPCFA may perform the audit on the premises of the financial institution, whether or not the institution is a credit union, bank, community development financial institution, or other qualified lender.

Section 8072. The proposed revision to subdivision (c)(2) of the existing regulation changes "NAIC code" to "NAICS code." The acronym refers to the North American Industry Classification System, the current business trade code system.

Regarding the second revision to this regulation, existing federal and state laws outside of the CalCAP program impose restrictions on insider transactions by lenders. Proposed revisions to subdivision (e) of the regulation set forth cross-references to many of these restrictions for purposes of providing guidance and clarification to participating lenders.

Section 8073. The existing regulation requires loss reserve accounts to be insured by the Federal Deposit Insurance Corporation (FDIC) or Securities Investor Protection Corporation. The proposed revision clarifies that loss reserve accounts held by participating credit unions must be insured by the National Credit Union Share Insurance Fund (NCUSIF). NCUSIF is a division of the National Credit Union Association, a federal agency, and is similar to the deposit insurance provided by the FDIC.

Section 8074. The existing regulation sets forth procedures to be used when a CalCAP borrower defaults on a loan and a participating lender seeks reimbursement from the lender's loss reserve account. In some cases, only a portion of a loan from a lender to an eligible borrower is enrolled in the CalCAP program. The proposed revision to subdivision (b) of the regulation clarifies that when a borrower defaults on a loan enrolled in the CalCAP program, the lender may only seek reimbursement for that portion of the loan enrolled in the program, not for the entire amount of the loan. The second revision in subdivision (d)(7) would correct a grammatical error and delete the duplicative word "of".

Section 8076. Subdivision (c)(1) of the existing regulation permits the CPCFA Executive Director to terminate a lender's participation in the CalCAP program if the lender becomes the subject of specified enforcement-type proceedings. The proposed revision to subdivision (c)(1) clarifies that termination may occur if the lender becomes the subject of *any* action by a regulatory agency and the action may impair the ability of the lender to participate in the CalCAP program.

Reliance

These regulatory amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions by CPCFA. They were also developed in consultation with CalCAP participating lenders.

Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affected persons or small businesses, than the proposed amended regulations.

Mandated Technology or Equipment

The CPCFA Executive Director has determined the revisions do not mandate the use of specific technologies or equipment.

Impact on Small Business and Others

The CPCFA Executive Director has determined that the revisions will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons. Furthermore, the CPCFA Executive Director has determined that the amended regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.